

# Pole Attachment Order and Further Notice of Proposed Rulemaking

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# Statutory Background

- Section 224 of the Communications Act
  - Section 224(b): ensure that the rates, terms, and conditions for pole attachments are just and reasonable
  - Section 224(f): utilities must provide a cable television system or any telecommunications carrier with nondiscriminatory access to its poles
- Key exclusions
  - Section 224(a): railroads, government-owned entities, or cooperatives
  - Section 224(c): states that have certified to the FCC that they regulate pole attachments (19 states + DC so far)

# Pole Access and Broadband

- The FCC's 2007 *Pole Attachment NPRM* recognized a link between pole attachments and broadband, and sought comment on certain pole attachment rate and access issues.
- The National Broadband Plan recommended that:
  - The FCC should establish rental rates for pole attachments that are as low and close to uniform as possible, consistent with Section 224 of the Communications Act of 1934, as amended, to promote broadband deployment.
  - The FCC should implement rules that will lower the cost of the pole attachment “make-ready” process.
  - The FCC should establish a comprehensive timeline for each step of the Section 224 access process and reform the process for resolving disputes regarding infrastructure access.
  - The FCC should improve the collection and availability of information regarding the location and availability of poles, ducts, conduits and rights-of-way.

# 2010 Pole Attachment Order and Further Notice of Proposed Rulemaking (FNPRM)

- Order
  - Clarifies that the statutory nondiscrimination requirement allows attachers to use space- and cost-saving pole attachment techniques where practical and consistent with pole owners' use of those techniques.
  - Establishes that the statutory right to just and reasonable access to poles includes the right of timely access. The details of a timeline are left to the FNPRM.
- FNPRM
  - Access (e.g., timelines, use of outside contractors)
  - Enforcement (e.g., informal dispute resolution, ensure that FCC complaint rules get incentives right)
  - Rates (e.g., reinterpret telecom rate formula, regulation of incumbent LEC attachments)

# 2010 Pole Attachment Order and FNPRM (con't)

- Opportunity for comment
  - Comments: 30 days from Federal Register publication; reply comments 60 days from Federal Register publication
  - State and local organizations have valuable insights that can help inform the process (even if those state or local entities are not directly affected by FCC rules in some cases)